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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re H.T., et al., Persons Coming Under  
the Juvenile Court Law.

B220519  
(Los Angeles County  
Super. Ct. No. CK 61168)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant  
and Appellant.

James M. Owens, Assistant County Counsel, and Byron G. Shibata, Deputy  
County Counsel, for Plaintiff and Respondent.

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L.C., the mother of minor sons H. and John, appeals from the order terminating her parental rights at a Welfare and Institutions Code section<sup>1</sup> 366.26 hearing. Appellant contends the juvenile court erred when it found the boys were adoptable. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Detention**

The family (the boys and their sister Diana) came to the attention of the Los Angeles County Department of Children and Family Services (Department) following a referral from Diana's school alleging that appellant had neglected Diana. Pursuant to section 300, the Department filed a seven-count petition on October 17, 2005, alleging in part the children were at risk due to father's alcohol abuse and appellant's failure to protect them.

Father admitted he drank alcohol daily and his drinking caused him to lose jobs. The family's landlady said she was evicting the family for nonpayment of rent, father yelled and mistreated the children, and appellant did nothing to defend them. The landlady also said Diana would leave the house and walk the streets without supervision. When asked about Diana's roaming the streets at night, appellant stated, "Well, she does [not] want to pay attention and she does what she wants anyway." Appellant said the family received family preservation services from August 7, 2003, to November 15, 2004, (for substantiated allegations of physical abuse) during which time she completed a parent education program.

Appellant was present at the detention hearing. The court found a prima facie showing had been made, placed the children in foster care, and ordered appellant be given monitored visits of no less than twice a week.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

## **II. Jurisdiction and Disposition**

On November 18, the Department filed a first amended petition further alleging that Diana's father Sergio had failed to provide the child with the necessities of life.

The Department report noted appellant's statement that father had been drinking heavily for years and would often drink in the presence of the children. During their four-year relationship, appellant had twice separated from father due to his drinking, but she never saw father strike any of the children and Diana never disclosed any physical abuse to her. Appellant admitted that at times, Diana would leave at night without telling her, but denied she had ever failed to look for Diana or been unable to find Diana.

At the hearing, the court sustained the first amended petition (with interlineations) and declared the children dependents. The court ordered family reunification services for appellant and gave the Department discretion to liberalize her visits. The court ordered appellant to complete a parenting program and to participate in individual counseling to address case issues.

In February, the Department reported appellant had completed a parenting class and was enrolled in a domestic violence class. Appellant was allowed unmonitored visits with the children on the condition father not be present.

### **A. Six Month Review**

The April 2006 report noted the children had been placed in a different foster home, appellant had completed a 20-week domestic violence program, started individual therapy and regularly visited the children. Appellant had been assaulted by father in March when he choked her after she refused his request to stop folding laundry so they could go somewhere later. The boys were developing age-appropriately and not exhibiting any mental or emotional problems.

At the May 23 hearing, the court granted appellant's request for a restraining order against father, found the parents were in partial compliance with the case plan and consistently visited the children, and continued reunification services.

### **B. Twelve Month Review**

The October report noted appellant's visits were consistent. Reportedly appellant continued to disregard the restraining order as she wished to remain in contact with father. The court held a contested section 366.21, subdivision (f) evidentiary hearing on January 18, 2007. An interim report indicated appellant had called the police because father would not leave her alone. Stipulated testimony from appellant's therapist indicated appellant had completed domestic violence and sexual abuse counseling and made significant progress. The court continued reunification services for appellant and terminated services for father.

### **C. Eighteen Month Hearing**

The April report noted John's negative and aggressive behavior. John would grab toys from his brother or foster siblings and often bit them when he did not get his way. John had begun biting his foster mother and hit H. in the back with a closed fist. The foster mother had to constantly keep a close eye on John because "he is the fighter of all the children." The concurrent planning assessment identified John's behavior as "[a]ggressive" and "[d]estructive." The Department recommended the boys be returned to appellant.

On April 19, the court returned the boys to appellant under a plan of family maintenance and subsequently issued a three-year restraining order against father.

#### **D. Section 364 Review**

In September, an information for the court noted a statement by father's landlady that about two months prior, appellant and the boys had come looking for father and found him, and they all went out to eat; when they returned, the landlady saw father playing with the boys. The section 364 report noted the boys' therapist stated the boys "are out of control and may be in need of medication." According to Dr. Karim, who conducted a psychological assessment of John, John demonstrated multiple disorders: oppositional defiant disorder, reactive attachment disorder, attention deficit disorder, and post-traumatic disorder. Dr. Karim stated those disorders would attach to H., and he (Dr. Karim) would present the case to a psychiatrist for possible medication for both children.

The Department reported the social worker (CSW) had made several unannounced visits to appellant's home and observed the boys fighting with each other. John's misbehavior appeared to be escalating as he had become more physically aggressive, biting, kicking and hitting others. H. appeared to be starting to mimic that behavior, and appellant was having difficulty calming and disciplining the boys. At one unannounced visit in August, the CSW observed appellant tie the boys to a chair with bed sheets when they misbehaved because she said it was the only way she could control them.

The CSW noted appellant appeared to lack disciplinary skills as she encouraged good behavior through candy or trips to the park rather than setting parental rules. The instructor of appellant's parenting class stated appellant did not understand what was being taught and was unable to apply what she learned. The boys' day care director also noted appellant lacked authority and knowledge of parenting techniques to effectively discipline the boys.

At the hearing, the court ordered the Department to detain the boys and file a petition. The Department informed the court that with additional services, the boys could safely remain in appellant's home.

### **E. Section 387 Petition**

On September 26, the Department filed a supplemental petition alleging the prior disposition had been ineffective to protect the boys as appellant had disciplined them by tying them to chairs with bed sheets and allowed father unlimited daily access notwithstanding the restraining order. The court detained the boys.

The October report indicated that with intensive therapeutic work, the boys' behavior was improving. The boys had been in therapy since March 2007. The court sustained the section 387 petition and set the matter for an evidentiary disposition hearing.

A last minute information report noted father had died in January 2008. The CSW reported the instructor from appellant's parenting class noted that John once spat on appellant, and appellant simply hugged the child and said he was "'just a little boy.'" The instructor opined appellant never fully grasped the parenting techniques from the program. At the February contested disposition hearing, the court ordered removal of the boys from appellant's custody and appellant's visits were to be monitored.

### **III. Permanency Planning**

The April 2008 report indicated that during a meeting with John's psychiatrist, Dr. Whyte, the foster mother stated H. exhibited sexual behavior toward John. Dr. Whyte opined the issues arose from the boys' "'learned behaviors'" and medication was not administered because it was "'the last recourse.'" After John had a tantrum and cried for a long time, Dr. Whyte explained that tantrums were also learned behavior not requiring medication. The CSW concluded, "The children's behaviors are years of learned behavior when they were in mother's custody (past, as well as, present). For [the] amount of time it took the children to learn these behaviors, [it] will take the same time to

‘undo’ these behaviors.” The court ordered a referral to therapeutic behavior services (TBS).

The June report indicated the boys had been referred to the placement recruitment unit because the foster parent was unwilling to adopt. The boys continued to act out sexually and lie to adults. John was receiving individual and play therapy, and as H. displayed behavior consistent with disruptive disorder, he qualified for TBS or full service partnership services. Although appellant’s visits were consistent, the Department recommended her visits be terminated because they undermined the adoption process.<sup>2</sup>

The December reports noted H. attended weekly therapy and John no longer qualified for TBS. The foster mother noted that when she drove the boys back after visits, they would scream, kick and become physically aggressive with one another. The foster mother believed that behavior was due to the sugar in the food appellant brought to the visits. The CSW reprimanded appellant for bringing sugary food to the visits and mentioned the boys’ behavior after the visits. Appellant simply laughed and said, “they are only small kids.” A prospective adoptive family, Mr. and Mrs. T., had been identified for the boys. After an overnight visit, Mrs. T. stated they had a good idea of what they were getting into because the boys exhibited behavioral challenges and she strongly believed she and Mr. T. were ready to adopt.

In December, appellant filed a section 388 petition seeking additional reunification services, a home-of-parent order or more frequent, liberalized visitation. The court set a hearing in February.

In February 2009, the Department noted the boys had been with the T.s from December 19, 2008, through January 27, 2009. John exhibited “explosive rage,” unpredictable outbursts three to five times a day, lasting up to an hour, and sexualized behavior, including kissing H. with an open mouth and licking their tongues. John would also stick his hand down or up the foster mother’s shirt and try and touch her breasts. H.

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<sup>2</sup> In July, the court terminated jurisdiction over Diana and awarded custody to her father.

also had angry outbursts and physical altercations and was “sexually precocious.” The boys were aggressive toward the foster parents, including biting, kicking, and scratching them. Appellant did not establish any boundaries for the boys during visits, and the T.s reported it would take two or three days for the boys to readjust after visits with appellant. The T.s concluded they did not possess the parenting skills to effectively discipline the boys, and the boys were removed from their home. The boys were referred to Ties for Adoption for assessment. There were no identified adoptive parents for the boys.

At the February hearing on the section 388 petition, the court stated, “The reality was that this mother has always been incapable of taking care of these children. I believe that [appellant] loves the children. I believe that she tries. She has always participated in therapy and worked really hard. But these children’s behaviors continue to worsen, and I have to say that at this point I [chalk] that up to the lack of parenting that they have received.” The court also observed, “I was looking at what was going on in the visits to determine whether mother had learned anything. And when I read reports that indicate that as the children are hitting their mother and hitting each other. And that the only thing mother can do is laugh during that, and that following that the children go back and assault their foster mother to the point where she is injured and asked to have them removed, there’s a pretty direct correlation here.” The court denied the petition and terminated appellant’s visits, finding them to be detrimental to the boys.

The August report indicated the boys were receiving therapy and TBS. The boys had two overnight visits with Mr. J.Z., who said the visits “went great.” Z. was a 33-year-old Caucasian single man who wanted to adopt because he wished to be a parent. Z. had hoped to be married by age 30, but since he had not married, he wished to focus on being a parent. Z. had a master of arts in sports administration and had worked with children most of his adult life. The boys were placed in Z.’s home on August 12.

The CSW observed a visit in which Z. demonstrated excellent parenting skills; he understood the importance of setting routines and boundaries and knew disciplinary



techniques such as time-outs. Z. was enthusiastic, confident, active and assertive with the boys and was also calm yet able to use a tone of voice to which the boys responded well. Z. showed appropriate flexibility in playing with and engaging the boys. Z. understood the legal and financial rights associated with adoption and appeared committed to adopting the boys and providing them with a permanent home.

When Z. was later interviewed by a CSW, he said the boys initially had outbursts, including crying, hitting and throwing small objects at him. Once when Z. took the boys out to eat, John “all of a sudden began to cry very loudly and hid under the table.” Z. stated he had been monitoring the children’s outbursts and how they had decreased steadily since their placement with him. The CSW concluded, “Naturally, the children are in the process of making a full adjustment to Mr. Z.’s home as it takes more time to fully integrate into the new home.” The CSW also noted that during her visit, both boys began to jump over the furniture and climb over the sofa. Z. said, “I don’t know why they act like this when the social workers come.” The CSW opined the fidgeting during her visits was probably because the boys associated social workers with being removed from a home, but she noted Z. had the ability to control the boys’ behavior with his firm tone of voice and use of directions. The CSW observed the home had appropriate sleeping arrangements, an ample amount of toys, and plenty of clothing for the boys. The boys said they liked Z. and appeared to be bonding to him. H. asked if they were going to remain with Z., and John said Z. was his “papi.” Z. was participating in individual and group therapy and was learning different parenting techniques. The CSW concluded the boys were likely to be adopted.

The court held the termination hearing on November 12. Moments before the hearing, appellant filed a section 388 petition seeking to reinstate reunification services or obtain a home-of-parent order. The court denied the petition and proceeded with the termination hearing.

The court reasoned:

The court does find by clear and convincing evidence that the boys are adoptable. I want to talk about that for a moment because the boys clearly have some behavioral issues. So the question for the court is are these children adoptable?

The reality is -- I've been on this case for four years. At the time that this case came into the system, [H.] was two. John was one. During those really, you know, developmentally challenging times, they truly had no parenting other than -- I don't mean to say anything bad about Diana -- but other than the parenting of Diana who was then 11, and had been 9 and 10 respectively when the children were born. And as good a job as Diana tried to do, she couldn't provide the basis of good parenting for these young boys.

They were then, unfortunately, in-and-out of foster homes for a while. They were returned to [appellant] where her choice, again, of discipline was tying them to the chair with bed sheets. And as I've previously indicated, if that's what she chose to do [when the] social worker was in front of her, I can't even imagine what happened when the social worker wasn't.

I believe, after reading all the reports and seeing the commitment of the foster father, that these boys are adoptable. That is going to take some work. It's going to take consistent parenting to undo the damage that's been done and to -- and to get the boys, to a certain extent, under complete control. But the reports indicate that there's already been significant strides made.

The foster father has now reached out and is getting some assistance from Ties, which I think is a good thing. But I truly believe -- he's here again today -- that with his consistency, his devotion, that the boys are adoptable. They are in his home. He has an approved home study. He's still here, wishing to adopt them, so there are no legal impediments to the adoption.

The court found no exceptions to adoption applied and terminated appellant's parental rights.

Appellant filed a timely notice of appeal from the order terminating her parental rights and an amended notice of appeal also appealing from the denial of her section 388 petition.

## DISCUSSION

Appellant contends the court erred when it found the boys were adoptable. “‘The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. In making this determination, the juvenile court must focus on the child, and whether the child’s age, physical condition, and emotional state may make it difficult to find an adoptive family. In reviewing the juvenile court’s order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time.’ We give the court’s finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming.” (Citations omitted.) (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562.)

“[I]t is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’” (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) That court also noted that “in some cases a minor who ordinarily might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child.” (*Id.*, at p 1650.)

Referring to the boys’ history of aggressive behavior, appellant argues that even though the court found the boys were adoptable by Z., too much emphasis should not be placed on that factor because the previous prospective adoptive parents were “unwound” by the boys ongoing psychological and emotional problems, and if Z. did not follow through with adoption, it was unlikely some other family would adopt the boys within a reasonable time.

The CSW’s statement the boys were adoptable is evidence supporting the court’s finding. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420-1421; *In re Jennilee*

*T.* (1992) 3 Cal.App.4th 212, 224.) Children with behavioral problems may be adoptable. (See e.g. *In re A.A.* (2008) 167 Cal.App.4th 1292, 1302-1303, 1305, 1312-1313 [two children who fought and scratched each other and suffered from developmental delays and reactive attachment disorder]; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1151, 1154 [child urinating on self and regurgitating food for no apparent reason]; *In re Sarah M., supra*, 22 Cal.App.4th 1642, 1646, 1650-1651 [one child sexually active while the other child experienced significant speech delays]; *In re Scott M.* (1993) 13 Cal.App.4th 839, 842, 844 [one child demonstrated self-destructive and paranoid behavior while another child exhibited depression and inappropriate interaction with other children].)

As support, appellant cites to *In re Asia L.* (2003) 107 Cal.App.4th 498, 503, a case in which the Court of Appeal reversed the juvenile court's finding three children were adoptable. One child suffered from enuresis, had problems with listening, staying still, lying and stealing, aggravated other children and pulled her braids out of her head when upset. (*Id.*, at p. 511.) The court reasoned that although the children's physical health weighed in favor of adoptability, their emotional and psychological issues presented a potential obstacle to adoption, the social worker's opinion the child was adoptable was insufficient, and the foster parents' willingness to explore the option of adoption was too vague to be considered evidence some family would be willing to adopt. (*Id.*, at p. 512.) However, the children required specialized placement, which was not available in that county, and the local department had failed to provide evidence of approved families willing to adopt children with the developmental problems faced by the children. (*Ibid.*)

Appellant also cites to *In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 800-802, 806-807, a case in which the Court of Appeal affirmed the juvenile court's finding the minor was not adoptable because the Department had over 10 months to find an adoptive home for the minor, who had severe asthma, was mildly delayed in mental and motor development and exhibited the abnormal behavior of banging her head.

In contrast to those cases, although the boys had emotional and behavioral problems, the boys' therapist indicated the boys' behavioral problems (the aggression and tantrums) were learned behaviors. The CSW and the therapist concluded the boys' emotional issues had been caused by appellant. The boys were in good health, within the normal range with respect to adaptive skills, activity levels, situational mood/affect, adaptive skills and self-care skills, were developing age-appropriately and had made progress since being placed with Z, who had an approved adoptive home study. (See *In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154.) With therapy, the boys had improved even before being placed with Z. and they had responded well to Z.'s combination of affection, direction and discipline. Critically, the boys were only five and six years old at the time of the permanency planning hearing.

Z., who was knowledgeable about adoption and had worked with children most of his adult life, was committed to adoption. Moreover, the paternal grandparents, who had been visitation monitors, had been interested in adopting the boys, but were not able to be considered because of the grandfather's immigration status. One of the foster parents, with whom the boys had lived for a year, did not want to adopt because of her age (70) and her belief the boys would benefit from a younger parent, but she was willing to be a legal guardian. Thus, substantial evidence supports the court's finding. (See *In re A.A.*, *supra*, 167 Cal.App.4th at p. 1312 ["[T]he existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child's age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. In other words, a prospective adoptive parent's willingness to adopt generally indicates the child is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family."].)

Furthermore, appellant did not contest the finding the boys were adoptable below. As the court reasoned in *In re I.W.* (2009) 180 Cal.App.4th 1517, 1526-1527, "Conceivably, there could be some legal impediment to adoption by a prospective adoptive parent that, in turn, might preclude reliance on this parent's interest as a basis

for an adoptability finding. Or, there could be facts that contraindicate adoptability notwithstanding the parent's interest. Here, however, mother failed to develop any issue along these lines. Had she done so, the juvenile court would have had the benefit of her viewpoint and might have found differently. Absent such an impediment or evidence, it follows that the foster parents' interest in adopting I.W. is sufficient to support the juvenile court's finding of general adoptability." (Citation omitted.)

**DISPOSITION**

The order is affirmed.

**WOODS, Acting P. J.**

**We concur:**

**ZELON, J.**

**JACKSON, J.**